

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 STEPHEN M. KELLY, )  
 SUSAN S. CRANE, )  
 WILLIAM J. BICHSEL, )  
 ANNE MONTGOMERY, and )  
 LYNNE T. GREENWALD, )  
 )  
 Defendants. )

NO. CR10-5586BHS

GOVERNMENT'S RESPONSE  
TO DEFENDANTS' MOTION  
TO SET ARRAIGNMENT  
FOR LATE OCTOBER

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Arlen R. Storm and Catherine L. Crisham, Assistant United States Attorneys for said District, hereby files this memorandum in response to Defendants' motion to continue the arraignment date until late October (Docket No. 19).

**I. BACKGROUND**

On September 2, 2010, a federal grand jury for the Western District of Washington returned an Indictment charging the defendants with (1) conspiracy, in violation of Title 18, United States Code, Section 371; (2) trespassing on Naval Base Kitsap, a United States Naval installation, in violation of Title 18, United States Code, Section 1382; (3) destroying property within the special territorial jurisdiction of the United States, in violation of Title

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1 18, United States Code, Section 1363; and (4) committing a depredation against property of  
 2 the United States having a value in excess of \$1,000, in violation of Title 18, United States  
 3 Code, Section 1361.

4 In order to provide the defendants with ample time to arrange for their travel to this  
 5 District, and in order to ensure that they had sufficient time to arrange the least expensive  
 6 means of transportation available, the government intentionally requested an arraignment  
 7 date of September 24, 2010, three weeks from the date of indictment. Counsel for  
 8 defendant Anne Montgomery, however, subsequently requested that the arraignment be  
 9 continued, so that those defendants who were living out of the District could move to  
 10 Tacoma before being arraigned. The government informed counsel that while it could  
 11 agree to a one-week continuance to October 1, 2010, it felt uncomfortable agreeing to a  
 12 continuance beyond that date. Thereafter, on September 15, 2010, and September 16,  
 13 2010, the defendants filed motions to continue the arraignment date to late October 2010.

## 14 **II. ARGUMENT**

15 The defendants have requested a continuance of the arraignment date to late October  
 16 2010, so that they can relocate to this district before they are arraigned, apparently to save  
 17 the expense of having to return to their homes, pack, and pay for a second trip to this  
 18 district. The government objects to the defendants' requested continuance.

19 First, defendants Bichsel and Greenwald are residents of Tacoma. Accordingly, they  
 20 do not require the continuance sought.

21 With respect to defendants Kelly (who resides in Oakland, California), Crane (who  
 22 resides in Baltimore, Maryland), and Montgomery (who resides in New York City), the  
 23 government simply believes that their request is unreasonable. The defendants, who have  
 24 not contested their identities, previously traveled across the country in order to engage in  
 25 the conduct for which they have been indicted by the grand jury. Accordingly, before they  
 26 engaged in that conduct, the defendants were well aware of the expenses that would be  
 27 required in order to return to this District in order to defend their actions. Having made the

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1 decision to travel here despite the known costs of returning, it simply seems unreasonable  
2 for the defendants, at this time, to seek such a lengthy continuance of the judicial process.

3 Furthermore, the government respectfully submits that the defendants' proffered  
4 reason for the proposed lengthy continuance – to allow them sufficient time to arrange to  
5 move to this district for the pendency of the proceedings – does not mandate the relief  
6 sought. Indeed, Title 18, United States Code, Section 4285 provides that if this Court  
7 orders the defendants released pending further judicial proceedings, the Court may, if “the  
8 interests of justice would be served” and the Court is “satisfied, after appropriate inquiry,  
9 that [a] defendant is financially unable to provide the necessary transportation to appear  
10 before the required court on his own, direct to the United States marshal to arrange for that  
11 person's means of noncustodial transportation or furnish the fare for such transportation to  
12 the place where his appearance is required, and in addition may direct the United States  
13 marshal to furnish that person with an amount of money for subsistence expenses to his  
14 destination.” The government does not need to move for the defendants to be detained  
15 pending trial. Accordingly, if the defendants' financial situations are in fact as they have  
16 described in their pleadings, the above-cited statute provides a means for them to travel  
17 back to this District for subsequent proceedings, and negates the need for them to have  
18 several additional weeks to arrange their temporary move to the District.

19 In short, while the government believes that defendants' request for an arraignment  
20 date in late October 2010 is unreasonable and unnecessary under the circumstances, the  
21 government is not adverse to working with the defendants to agree upon a mutually-  
22 convenient arraignment date that will allow the defendants to obtain the least expensive  
23 airline tickets possible. The government believes that the currently-scheduled arraignment  
24 date during the first week of October should allow the defendants to accomplish that  
25 objective, while at the same time furthering the legitimate need of the government and the  
26 public to prosecute this case within a reasonable time frame.

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1 **III. CONCLUSION**

2 For the foregoing reasons, the government respectfully requests that the defendants'  
3 motion for a continuance of the arraignment date to late October be denied.

4 DATED this 22<sup>nd</sup> day of September, 2010.

5 Respectfully submitted,

6 JENNY A. DURKAN  
7 United States Attorney

8 /s/ Arlen R. Storm

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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

/s/ Rachel McDowell

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